

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEWY, INC.,

Plaintiff/Counter-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counter-Plaintiff.

Case No. 1:21-cv-01319 (JSR)

**[PROPOSED] ORDER GRANTING PLAINTIFF'S APPLICATION TO STRIKE
CLAIM 20 OF U.S. PATENT NO. 7,076,443 FROM
DEFENDANT'S FINAL ELECTION OF ASSERTED CLAIMS**

WHEREAS, on August 16, 2021, Defendant International Business Machines Corporation ("IBM") served a preliminary election of asserted claims pursuant to an agreement between the parties that IBM could assert no more than ten claims from each patent and no more than a total of 32 claims;

WHEREAS, the Seventh Amended Revised Civil Case Management Plan (Dkt. No. 88) required the parties to meet and confer, no later than one week after the Court issued its Claim Construction Order, to discuss a final election of asserted claims and prior art references;

WHEREAS, the Court issued its Claim Construction Order on November 9, 2021 (Dkt. No. 90);

WHEREAS, the parties had agreed that the final election of asserted claims could identify no more than five asserted claims per patent from among the previously identified claims from IBM's preliminary election of asserted claims served on August 16, 2021, and no more than a total of 16 claims;

WHEREAS, on November 15, 2021, IBM served its final election of asserted claims that included, among other claims, claim 20 of U.S. Patent No. 7,076,443 (“the ’443 patent”), which was not identified in IBM’s preliminary election of asserted claims;

WHEREAS, on November 16, 2021, Plaintiff Chewy, Inc. (“Chewy”) requested leave to strike claim 20 of the ’443 patent from IBM’s final election of asserted claims;

WHEREAS, on November 16, 2021, the Court indicated that it would grant Chewy’s application to strike claim 20 of the ’443 patent from IBM’s final election of asserted claims;

WHEREAS, later on November 16, 2021, IBM served an amended final election of asserted claims that complies with the agreement between the parties;

NOW THEREFORE, considering Chewy’s application to strike claim 20 of the ’443 patent from IBM’s final election of asserted claims:


IT IS HEREBY ORDERED that Chewy’s application is GRANTED;

IT IS FURTHER ORDERED THAT:

The amended final election of asserted claims served by IBM on November 16, 2021 shall be considered final.

Dated: _____

11/22/21



United States District Judge